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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/723,146

11/25/2003

Hue Scott Snowden

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9253

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7590

03/24/2009

KIMBERLY-CLARK WORLDWIDE, INC.

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EXAMINER

FLETCHER III, WILLIAM P

ART UNIT

PAPER NUMBER

1792

MAIL DATE

DELIVERY MODE

03/24/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/723,146	<b>Applicant(s)</b> SNOWDEN ET AL.	
	<b>Examiner</b> William P. Fletcher III	<b>Art Unit</b> 1792	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 16 January 2009.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 2,3,8-10,16-27 and 36 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2,3,8-10,16-27 and 36 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on January 16, 2009, has been entered.

### ***Response to Amendment***

2. Claims 2, 3, 8-10, 16-27, and 36, remain pending.

### ***Response to Arguments***

3. Applicant's arguments filed January 16, 2009, have been fully considered but they are not persuasive.

A. The concentration of monovalent salt anti-static agent taught by Baldwin is merely exemplary and there is no teaching away from utilizing quantities outside of the range of 0.2-0.5 wt.-%. Specifically, Baldwin teaches that the "salt...when present in the finish accepts moisture from the surrounding atmosphere and readily ionizes, thus enhancing the antistatic properties of the fabric. The required amount of salt is dissolved in water then added to the bath" [5:19-23]. It is clear that the amount of salt added to the composition can be any amount required to achieve a desired level of static dissipation. Consequently, optimizing the concentration of monovalent salt in either direction, up or down, from the

exemplary concentration of 0.2-0.5 wt.-% would have been readily obvious to one skilled in the art as detailed in prior Office actions.

B. Insofar as Applicant may assert unexpected results for the claimed range of "less than 0.05 weight percent" based upon the examples in the specification, Applicant is reminded that evidence of unexpected results must be commensurate in scope with the claimed invention. In other words, the showing of unexpected results must be reviewed to see if the results occur over the entire claimed range. Further, to establish unexpected results over a claimed range, Applicant should compare a sufficient number of tests both inside and outside the claimed range to show the criticality of the claimed range. See MPEP 716.02. The examples in the specification are not commensurate in scope with at least independent claim 36 because the results obtained are for sodium nitrate, specifically, while at least independent claim 36 recites a monovalent salt, broadly. There is no evidence that the same or similar results are obtained for any and all monovalent salts. Further, only Example 7, with a sodium nitrate concentration of 0.04 wt.-% is even within the claimed range, yielding a single data point for comparison that is insufficient to establish whether the unexpected results are achieved over the entire claimed range.

***Claim Rejections - 35 USC § 103***

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

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5. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

6. Claims 2, 3, 8, 16-27, and 36, are rejected under 35 U.S.C. 103(a) as being unpatentable over Baldwin (US 4,411,928 A) in view of Coates (US 4,028,887 A).

A. Baldwin and Coates are applied herein again as set forth in prior Office actions.

B. With respect to new claim 36, application is by a bath [5:28-34]. Further, while neither of these references expressly teaches the claimed hydrostatic head, it is the Examiner's position that this is a physical property inherently possessed by the coated fabric. Since Baldwin in view of Coates renders obvious all of the claimed composition and process limitations, it is the Examiner's position that the finished product inherently possesses this physical property, absent evidence to the contrary.

7. Claims 9 and 10, are rejected under 35 U.S.C. 103(a) as being unpatentable over Baldwin (US 4,411,928 A) in view of Coates (US 4,028,887 A), as applied to claim 36 above, and further in view of Potts (US 5,145,727 A).

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- A. Baldwin and Coates are applied herein again as set forth above.
- B. It would have been obvious to one of ordinary skill in the art to modify the process of Baldwin and Coates so as to utilize, as the non-woven substrate, an S/M/S laminate, as noted in the prior Office actions.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to William P. Fletcher III whose telephone number is (571) 272-1419. The examiner can normally be reached on Sunday, 5:00 AM - 12:00 PM and Monday through Friday, 5:00 AM - 3:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Timothy H. Meeks can be reached on (571) 272-1423. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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/William Phillip Fletcher III/  
Primary Examiner, Art Unit 1792

March 22, 2009